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2 manipulation.

3 Absent that, I think, you know, we  
4 would proceed as if it were the correct time,  
5 but, you know, your confidence of not having all  
6 of those external factors would be much less than  
7 it is when you have external evidence that's all  
8 consistent with the time.

9 Q. Well, what about -- okay.

10 And you've been an expert in other  
11 cases; right, an expert witness?

12 A. I have not been an expert witness in  
13 other cases.

14 Q. This is the first time you have ever  
15 even sat for a deposition?

16 A. Well, I have sat for a deposition  
17 before.

18 Q. Have you ever been asked hypotheticals  
19 at those depositions?

20 A. Yes.

21 Q. Okay.

22 So you know that's a fair question for  
23 experts, hypotheticals?

24 A. Yes.

25 Q. So the hypothetical I asked you was if

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2 the three e-mail servers didn't exist, none of  
3 that data existed, it's fair to say you'd have  
4 less confidence in the creation date of those two  
5 TIFF images; true?

6 A. I mean, again, your hypothetical asks  
7 me to discard the servers, it doesn't -- I mean,  
8 we would look for other, you know, other evidence  
9 outside of that.

10 Assuming the only thing I have -- maybe  
11 this is your hypothetical -- the only thing I  
12 have is the time appended by the computer  
13 itself --

14 Q. Yes, assume that.

15 A. -- would I be as confident as I am in a  
16 case where I also have consistent evidence from  
17 external servers?

18 No, I would not be as confident.

19 Q. And if you found evidence of a system  
20 clock being manipulated along with only having  
21 the date appended to that file, would you be even  
22 less confident in the accuracy of that creation  
23 date?

24 A. I think that would depend on the system  
25 clock manipulation and our evaluation of how it

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2 would have affected that particular e-mail.

3 These are all very context -- the  
4 problem with the hypotheticals is they are all  
5 very contextual, so it really depends on the  
6 other evidence, you know, in terms of if I have a  
7 system clock manipulation that appears to have  
8 impacted that time, I wouldn't be confident in it  
9 at all.

10 Q. How would you know if a system clock  
11 manipulation affected a particular file's  
12 creation date?

13 A. Well, if you -- I mean, if I can show  
14 that at the time the file was created on the  
15 computer the system clock was backdated, that  
16 would be one way.

17 Q. Are you aware that Mark Zuckerberg --  
18 related to the TIFF images attached to the Kole  
19 e-mail, your expert opinion in that report was  
20 that that is the authentic contract between the  
21 parties; true?

22 A. The TIFF images, the StreetFax contract,  
23 yes.

24 Q. And you are aware that Mark Zuckerberg  
25 has never offered a declaration in this case

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2 agreeing with that position, that that is the  
3 authentic contract between the parties?

4 A. I am not aware one way or the other of  
5 what Mr. Zuckerberg has offered in the way of  
6 declarations.

7 Q. Are you aware that none of the other  
8 experts in this entire case have offered an  
9 opinion that the StreetFax contract is the  
10 authentic contract between the parties?

11 A. I don't know that one way or the other.

12 Q. Now, we talked a little bit earlier  
13 about rootkits and malware; you remember I was  
14 discussing that?

15 A. Yes.

16 Q. And rootkits can be used by hackers,  
17 you would agree?

18 A. Rootkits can be used by hackers, I  
19 would agree with that.

20 Q. Can hackers take over the operation of  
21 a computer, is that one of the things hackers  
22 have the ability to do?

23 A. It depends, again, on the specific  
24 circumstances. I mean, if they have the proper  
25 access and, you know, that the software which

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2 would allow that kind of control is in place,  
3 yes.

4 Q. Does that kind of software exist for  
5 them to do that, for hackers to do that?

6 A. Does it exist in the world?

7 Q. Yes.

8 A. Yes.

9 Q. Can hackers take over e-mail programs?

10 A. What do you mean, take over e-mail  
11 programs?

12 Q. Intrude on someone's computer and send  
13 out e-mails on their behalf.

14 A. Yes.

15 Q. Can hackers intrude on someone's  
16 computer and deposit files onto that person's  
17 computer?

18 A. There's no questions about what hackers  
19 are capable of doing in the world today, yes.

20 Yes.

21 Q. Well, let's talk about back in 2004,  
22 then.

23 Would you amend any of my answers if I  
24 asked you those questions and said in 2004 can a  
25 rootkit be used by a hacker, is there a different

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2 answer?

3 A. I think the same general answer would  
4 apply to 2004.

5 Q. Very well.

6 Did your work on this case cause you to  
7 learn that anyone involved in this case has some  
8 ability for computer hacking?

9 MR. SOUTHWELL: Object to the form.

10 A. Could you rephrase that?

11 Q. You analyzed a bunch of computers in  
12 this case; right?

13 A. Right.

14 Q. Some were provided or produced by Paul  
15 Ceglia; correct?

16 A. Correct.

17 Q. Some were produced by Mark Zuckerberg?

18 A. Correct.

19 Q. In part of your analysis of those  
20 computers did you learn that anyone involved in  
21 this case has hacking ability?

22 A. Nothing in my analysis indicated that  
23 anyone involved in the case had hacking ability,  
24 no.

25 Q. Are you aware from things outside of

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2 your analysis that Mark Zuckerberg has some  
3 proficiency as a computer hacker?

4 A. I am aware in a general sense that  
5 Mr. Zuckerberg has been accused of some actions  
6 which were called hacking in the past; I do not  
7 have any information regarding his proficiencies  
8 or his ability to do that.

9 Q. Are you aware that his company Facebook  
10 has a hacking contest every year amongst  
11 employees?

12 A. No.

13 Q. Are you aware that Mr. Zuckerberg has  
14 hired renowned hackers to be employees?

15 A. I'm not aware of that one way or the  
16 other.

17 Q. Did you look for evidence of hacking on  
18 Paul Ceglia's parents' computer where these TIFF  
19 images supposedly originated from?

20 A. We did not.

21 Q. But even if you looked at it, is it  
22 possible that a hacker who accessed a computer  
23 could leave no trace of that intrusion? Isn't  
24 that possible?

25 A. It is theoretically possible for a

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2 hacker to leave no trace.

3 Q. Now, the StreetFax contract that we've  
4 been talking about you found on two different  
5 pieces of media; correct? I think you say that  
6 at the top of 15, page 15 of Exhibit 21?

7 A. Yes, that's correct.

8 Q. And let's just be clear for the Court,  
9 because later on on that page -- correct me if  
10 I'm wrong -- you say, you clarify that the  
11 StreetFax contract was found on a hard drive that  
12 you analyzed and a forensic copy of that same  
13 hard drive that you analyzed.

14 Is that a fair statement?

15 A. I don't think we're clarifying anything.  
16 I think we're being very clear about the pieces  
17 of media we analyzed. The StreetFax contract was  
18 on two different hard drives. I think we're very  
19 clear on that very page; right? I think actually  
20 in the first paragraph in the second sentence  
21 that in fact one is a copy of a hard drive that  
22 we made and was produced to us in July and the  
23 other, again, was a copy we made of StreetFax in  
24 July that we determined upon analysis was a  
25 actually a forensic image of the hard drive, so



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2 we have the Seagate hard drive that's produced to  
3 us, we have a Western Digital, we determined the  
4 Western Digital hard drive was in fact a forensic  
5 copy that had been previously made of that, and I  
6 think we're very clear about that in the second  
7 sentence.

8 Q. So the forensic copy was that physical  
9 hard drive that had that forensic copy on it,  
10 that was not produced by Paul Ceglia, that was a  
11 copy made of something he produced; true?

12 A. Are you referring to the Western  
13 Digital hard drive?

14 Q. I'm referring to the forensic copy that  
15 you mentioned on page 15.

16 A. Okay.

17 The forensic copy was on a Western  
18 Digital hard drive that was produced to us in  
19 Chicago by Mr. Lake as part of the Ceglia media.  
20 To me, that's produced by Paul Ceglia, so I would  
21 say that both of them in fact were produced to us  
22 by Paul Ceglia.

23 Q. Now, the computer where these TIFF  
24 images were found, did you read Paul Ceglia's  
25 father's declaration that was filed in this case

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2 that was document number 419?

3 A. I may have read it at one point in  
4 time, I don't have a specific recollection of  
5 that.

6 Q. Well, let's assume, since you don't  
7 have a recollection of that, that Mr. Ceglia's  
8 father declared that his son, Paul Ceglia, the  
9 plaintiff, never had access to the computer on  
10 which the Kole e-mail originated, let's assume he  
11 says that.

12 A. Rather than assuming it, can we  
13 actually look at a copy of the --

14 Q. This is a hypothetical for now.

15 Let's just assume he said that, which  
16 I'll represent to you he did say that in document  
17 419, but I'll let you answer the question with an  
18 assumption, you don't have to accept the fact as  
19 true, we'll just do the hypothetical.

20 Would that change your opinion that  
21 Paul Ceglia sent those e-mails if his father  
22 declared under the penalty of perjury that Paul  
23 Ceglia never had access to that computer?

24 MR. SOUTHWELL: Mr. Boland, are you  
25 referring to document 419?

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2 MR. BOLAND: That's what my notes say,  
3 yeah.

4 MR. SOUTHWELL: Because that's not what  
5 it says. It doesn't say anything about he  
6 never had access. It asserts my son Paul  
7 Ceglia never used the computer, which is  
8 contrary to some earlier declarations he's  
9 provided, but --

10 MR. BOLAND: Let's clarify that.

11 Q. Let's just say hypothetically Mr. Ceglia  
12 does offer a declaration of the father, Carmine  
13 Ceglia, saying that Paul Ceglia never had access,  
14 never used, never got anywhere near that  
15 computer.

16 Would that declaration change your  
17 opinion regarding your conclusion that Paul  
18 Ceglia sent those e-mails?

19 A. Based on the forensic evidence, I think  
20 it is clear that Paul Ceglia sent those e-mails.  
21 I would not regard a statement like that from  
22 Mr. Ceglia to be credible in light of the  
23 evidence that's been uncovered in this case, so  
24 no, it would not change my opinion.

25 Q. And how did, in your opinion, based on

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2 your forensic analysis, how did Paul Ceglia send  
3 this e-mail, meaning was he physically at the  
4 computer and hit the keys on the keyboard to send  
5 it or did he somehow remotely access the computer  
6 and then send the e-mail that way?

7 A. Again, given the fact that the files  
8 were copied physically to the hard drive, I would  
9 think the most likely explanation is in fact a  
10 physical access to the computer, but, you know, I  
11 can't eliminate remote access as a possibility.

12 Q. So you're saying one's more likely? Is  
13 that your --

14 A. I believe so.

15 Q. And define the term "likely." What  
16 does that mean? How did you rule out the  
17 likelihood of remote access?

18 A. Define likely?

19 I think if I had to from -- if you  
20 asked me do I think he had physical access or  
21 remote access, I think there's a greater  
22 probability, meaning more likely that he had  
23 physical access, that's likely.

24 Q. And what's the forensic evidence that  
25 supports that opinion?

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2 A. Again, I think the copying of the  
3 scanned image to the hard drive immediately  
4 beforehand to me is more consistent with physical  
5 access, but, again, you know, you're asking  
6 whether remote access is possible? Yes.

7 And I should say, you know, I mean, I'm  
8 talking remote access theoretically. You know,  
9 whether under the circumstances and the  
10 capabilities that, you know, Adelphia had at the  
11 time in terms of whether it offered Web access  
12 and all of that, that's a specific question as to  
13 whether in these circumstances remote access is  
14 possible, I don't know that.

15 As a general matter, I can't eliminate  
16 remote access as a possibility.

17 Q. Did your investigation reveal where  
18 Paul Ceglia resided at the time that e-mail was  
19 sent?

20 A. Our forensic analysis of the Ceglia  
21 media did not reveal where Mr. Ceglia resided at  
22 the time this was sent.

23 Q. And did it reveal where Paul Ceglia's  
24 parents' computer was physically located at the  
25 time those e-mails were sent?

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2 A. There is some evidence that in 2010  
3 that IP address was registered to the Buffalo,  
4 New York, area, so I think there's some support  
5 for the fact that the computer resided somewhere  
6 in upstate New York, but in terms of drawing a  
7 definitive conclusion about where that resided, I  
8 can't do that from the forensics.

9 Q. Well, you'd agree with me that your  
10 conclusion about -- again, another  
11 hypothetical -- your conclusion about Paul Ceglia  
12 having most probably physical access to the  
13 computer to send the e-mails, if he resided  
14 outside the state of New York and was physically  
15 outside the state of New York at the time those  
16 e-mails were sent, the likelihood of him being  
17 the one who sent the e-mails is very low, since  
18 he wasn't physically accessing the computer at  
19 that time; true?

20 MR. SOUTHWELL: Object to the form.

21 A. I completely disagree with that.

22 I mean, the question is not where did  
23 he reside, the question is where he is at a  
24 particular point in time.

25 I reside in New York, I visit my

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2 parents frequently in Indiana, so I don't  
3 think -- and I use their computer when I'm there,  
4 so I don't think you can possibly conclude from  
5 where somebody purportedly resides that there's a  
6 low likelihood they were at their parents' house  
7 or at a location where their parents resided at  
8 any particular point in time.

9 Q. Well, let's not use reside. I'll be  
10 more precise.

11 What if hypothetically on the date and  
12 time these e-mails were sent he was not  
13 physically in Buffalo, New York, he was in  
14 another state, then what's the likelihood he sent  
15 the e-mails then, what's the probability he was  
16 the one who sent the e-mail?

17 A. I wouldn't want to put a number on it.

18 Again, you know, remote access is  
19 possible. I think it is more likely explained by  
20 physical access, but in terms of if Mr. Ceglia  
21 was in a particular location, what's the  
22 likelihood he sent the e-mails, I think it is  
23 absolutely clear from all of the evidence in this  
24 case, from the StreetFax e-mails themselves, from  
25 the attempt to manipulate the Work For Hire

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2 document, attempt to create fraudulent Work For  
3 Hire documents, from all the manipulation of the  
4 computer we see in this case I think it is  
5 absolutely clear that the StreetFax e-mails, that  
6 those e-mails are genuine, were sent by Paul  
7 Ceglia and contain the authentic contract, so I  
8 think the probability that Mr. Ceglia sent those,  
9 regardless of where he was at any particular  
10 point in time, is exceedingly high.

11 Q. So it's your testimony that if at the  
12 precise moment those e-mails were sent he was in  
13 Florida or New Mexico when these were sent from  
14 New York, same probability he sent them as if he  
15 was in Buffalo?

16 A. His location would not change my  
17 assessment that Paul Ceglia sent those because I  
18 think the evidence is absolutely overwhelming.

19 The only thing that would do would  
20 change my conclusion about the form of access to  
21 the computer, it would not impact my  
22 determination as to who sent it at all because,  
23 again, the forensics in this case is absolutely  
24 overwhelming.

25 Q. Outlook Express, which was the e-mail



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2 account from which this was sent, has the  
3 capacity to synchronize with a Web-based account;  
4 true?

5 A. As a general principle, yes, that's  
6 true.

7 Q. Do you find any evidence that this  
8 Outlook Express account was unable to synchronize  
9 with a Web-based account?

10 A. No. Again, you know, I don't know the  
11 specifics in terms of versioning and how and what  
12 particular data was syncing, you know, those can  
13 vary across time, so I don't know how this version  
14 of Outlook Express operated in conjunction with  
15 an Adelphia account, but I have no reason to  
16 believe that there wasn't some syncing capability  
17 because that's generally something that Outlook  
18 Express offers.

19 Q. And when Outlook Express synchronizes,  
20 when it's set up that way, with an external  
21 e-mail account, it can synchronize and pull down  
22 everything, the inbox, the deleted files,  
23 attachments, et cetera; true?

24 A. I think it depends, again, on how it's  
25 set up to sync. There is certainly a possibility

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2 that -- and by deleted items I assume you are  
3 talking about deleted items that still physically  
4 reside in some kind of trash bin or something.

5 Q. Yes, that is possible.

6 A. There are certainly programs that sync  
7 everything, there are programs that sync only the  
8 inbox, there are programs that sync the inbox and  
9 the sent mail, there are programs which sync  
10 everything, it really depends, and a lot of  
11 programs can be configured in different ways, so,  
12 I mean, as a general matter, if you're asking me  
13 is it possible, do there exist programs in the  
14 world that allow you to sync the entire contents  
15 of a Web mail account to a program like Outlook  
16 Express, yes, that's true.

17 Q. And I'm asking about Outlook Express  
18 specifically, does it have the capability to  
19 synchronize with a Web-based e-mail account?

20 A. It does, again, but, you know, what  
21 items specifically are synced I think could vary  
22 from version to version and from configuration to  
23 configuration, so as to this version of Outlook  
24 Express, I don't know.

25 As a general principle, yes, Outlook

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2 Express does sync with Webmail accounts.

3 Q. So if I have an Outlook Express account  
4 and I have it synchronizing with my Web-based  
5 account and I'm nowhere near my office computer  
6 which has Outlook Express on it, but I'm here at  
7 the offices of Gibson, Dunn and I get online to  
8 my Web-based e-mail, the one that's synchronizing,  
9 and I send an e-mail out with a couple of  
10 attachments.

11 Are you with me so far?

12 A. Yes.

13 Q. Okay.

14 And I go back to my office two days  
15 later and turn on my computer and Outlook Express  
16 is configured to synchronize my entire inbox and  
17 sent e-mails with my Web-based account.

18 You'd agree with me that that function  
19 would pull down from my Web-based account an  
20 e-mail that I sent here at Gibson, Dunn along  
21 with the attachments that I sent?

22 A. So your hypothetical is if you from  
23 Gibson, Dunn sent two e-mails using your Webmail  
24 account and then you returned to your offices and  
25 opened Outlook Express would it sync?

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2 I mean, I think that would depend on  
3 how it was configured. My guess would be you  
4 would actually probably have to access the  
5 Webmail account being synced, and I don't know  
6 that there's --

7 Q. But depending on how it was configured,  
8 that could happen?

9 A. Again, I think if you went and you  
10 accessed your Webmail account and it was set up  
11 to sync, yeah, I would think that certainly would  
12 be possible.

13 Q. Let's talk about the -- you are  
14 familiar with the getzuck e-mail account, it's in  
15 your report?

16 A. Yes.

17 Q. And you claim there that Mr. Ceglia  
18 deleted e-mails from that account.

19 A. Can I go to the part of the report  
20 where we discuss that?

21 Q. Let me ask you, do you recall that  
22 conclusion, that he deleted e-mails from the  
23 account?

24 A. I recall the conclusion that e-mails  
25 had been deleted from the account, it is in my

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2 recollection that we had evidence that that  
3 account had been in use through 2011 and that  
4 there were no e-mails existing in the account  
5 prior to sometime in January, so the logical  
6 conclusion is that something has been deleted.

7 Q. Now, by the phrase you just used, the  
8 account was in use, you mean the account was  
9 opened at a certain date, that's what you're  
10 calling in use?

11 A. That's not what I'm calling in use.

12 What I'm calling in use, I'm saying the  
13 account was actually used, not just opened.

14 Q. And used for -- in what way?

15 A. I would have to refresh my recollection  
16 with the report for the specifics. I know it was  
17 used -- it was used in some way in connection  
18 with a receipt of something from Facebook or  
19 something like that, we found evidence of that,  
20 and so it was evidence of actual use and not just  
21 the fact that the account was opened.

22 Q. Let's look at page 52 of your -- of the  
23 Exhibit 21 you have in front of you --

24 A. 52, the top page?

25 Q. Yes.

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2 And I think section D is where you talk  
3 about deletion of data from the getzuck Webmail  
4 account.

5 Do you see that?

6 MR. SOUTHWELL: Are you referring to  
7 Exhibit 1?

8 MR. BOLAND: What did I say?

9 MR. SOUTHWELL: You said Exhibit 21.

10 MR. BOLAND: I'm sorry, Exhibit 1.

11 Thank you for the correction.

12 MR. SOUTHWELL: And we're on page 52 in  
13 the upper right?

14 MR. BOLAND: Page 52.

15 A. Yes.

16 Q. So the activity that you found --  
17 correct me if I'm wrong -- was that the Ceglia  
18 media was used to read an e-mail on April 18,  
19 2011.

20 Do you see that phrase there?

21 A. Mm-hm.

22 Q. And that was an e-mail received from  
23 Facebook, actually, on the activation of a  
24 Facebook account; right?

25 A. Yes.

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2 Q. And do you know how Facebook accounts  
3 get set up?

4 A. Not specifically.

5 Q. Do you know if Mr. Ceglia had to send  
6 an e-mail to someone at Facebook to set up that  
7 account, if you know?

8 A. I don't know.

9 Q. So what you do know is an e-mail was  
10 received from Facebook, so there's one; right?

11 A. Yes.

12 Q. And there's no evidence you found of  
13 any e-mails being sent from that account; true?

14 A. I believe the evidence we have, again,  
15 is the evidence that's outlined here, that that  
16 e-mail address was used to receive an e-mail  
17 related to the Facebook account, yes.

18 Q. And so my question is, no evidence that  
19 e-mails were ever sent from that account; true?

20 A. Well, I don't know whether that's the  
21 case because I don't know whether in fact the  
22 post-January 28, 2012 e-mail included sent  
23 e-mails or not.

24 Q. I'm just saying your report doesn't  
25 show any evidence that he ever sent an e-mail

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2 from that account.

3 True?

4 A. Again, that's not relevant to our  
5 report; right?

6 We received that e-mail data, we looked  
7 at it for only two things; one, we reviewed it  
8 for presumptively relevant materials that would  
9 be produced to you and then subsequently to  
10 Gibson, Dunn to pass privilege review.

11 We identified no such data in the  
12 existing data. We did know from an Internet  
13 analysis from the Ceglia media that in fact that  
14 e-mail was in use for the purposes of receiving  
15 an e-mail from Facebook in April 2011 and despite  
16 that there was no content for any of 2011 up to  
17 January 28th of 2012. That indicates to me the  
18 e-mail's been deleted. I don't know who deleted  
19 it, I don't know what the activity was that led  
20 to the deletion, I don't know how much data was  
21 received or sent prior to January 28, 2012.

22 Your question to me was do I have any  
23 evidence that it was used to send e-mail.

24 What I'm saying is it's possible that  
25 we have sent e-mail from after January 28, 2012.



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2 I don't know, because my only analysis of that  
3 media, of that data was to see whether there were  
4 presumptively relevant materials.

5 Q. But I'm talking about your conclusion  
6 that my client did have e-mails in that account  
7 and he deleted them.

8 It's fair to say your report indicates  
9 that he actually had e-mails which he deleted  
10 from that account; true?

11 A. Yes, based on the conclusion, again,  
12 that we have evidence it was in use and there's  
13 no e-mail.

14 Q. All right.

15 Let's ask about the Harvard e-mail  
16 account of Mr. Zuckerberg.

17 You are aware that there are no e-mails  
18 at all in that account from -- related to  
19 Mr. Ceglia and Zuckerberg from, the earliest one  
20 being June 2003, you are aware of that, that's  
21 the earliest e-mail?

22 A. I have not done a date analysis of that  
23 e-mail, no.

24 Q. Well, your team worked to produce the  
25 e-mail that was provided us from that account;

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2 true?

3 A. Correct.

4 Q. And were you aware that the e-mail that  
5 your team produced using a variety of search  
6 terms which included my client's name and  
7 Mr. Zuckerberg didn't produce a single e-mail  
8 between those two individuals until June of 2003?  
9 Are you aware of that?

10 A. I am not aware of the content of that  
11 production.

12 Q. All right.

13 Well, let's say that that's what  
14 happened, okay, let's use a hypothetical.

15 Are you aware that the contract in this  
16 case, the paper contract that's being disputed  
17 has a signing date of April 28, 2003? Are you  
18 aware of that?

19 A. Again, I don't think I've seen the  
20 paper contract.

21 Q. Copies that you've seen.

22 A. Yes, the copies I've seen have a signing  
23 date of that date.

24 Q. Okay.

25 And April is before June in the

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2 calendar; right?

3 A. Well, April 2003 is before June 2003.

4 Q. Correct.

5 And would you agree with me, then, if  
6 there are no e-mails that you were able to  
7 recover, your team, from Mr. Zuckerberg's Harvard  
8 account from April to June of 2003, that  
9 Mr. Zuckerberg must have deleted them?

10 MR. SOUTHWELL: Objection.

11 Q. I am asking if that's your conclusion  
12 based on that hypothetical, if there's no e-mails  
13 from April of '03 when the contract was signed  
14 between the parties and June of '03, which was  
15 the first e-mail that we were provided, they must  
16 have been deleted?

17 A. That would not be my conclusion.

18 Q. Very well.

19 But it is your conclusion that my  
20 client had the getzuck e-mail account in use and  
21 because there's no e-mails in it, it's been  
22 deleted?

23 A. Excuse me --

24 Q. Just let me finish the question.

25 A. Excuse me, you keep misrepresenting

1 B. Rose

2 what I said.

3 What I said was --

4 Q. Sir, I'm asking the questions. I  
5 didn't finish my question.

6 A. And I'm answering the question.

7 What I said was that this e-mail  
8 account was in use prior to January 28, 2012,  
9 there was data in there.

10 MR. BOLAND: I am going to object to  
11 this entire answer. There's no question  
12 pending. I'm going to object to everything  
13 he is saying and ask that it all be stricken  
14 from the record.

15 A. I absolutely was clear with you that I  
16 can't say who deleted --

17 MR. BOLAND: You know, if we need to  
18 dial up the judge, Mr. Southwell, and ask  
19 him to instruct the witness to answer  
20 questions, I'll be happy to take a break and  
21 do that.

22 MR. SOUTHWELL: He answered your  
23 question. I'm looking at the transcript  
24 right here, he answered your question.

25 Why don't you let him finish.

1 B. Rose

2 MR. BOLAND: I didn't finish my  
3 question before he started speaking.

4 MR. SOUTHWELL: There was a question, a  
5 question mark and then he proceeded.

6 Q. It's your position that Mr. Ceglia  
7 deleted e-mails from the getzuck account?

8 A. It is my position that e-mail was  
9 deleted from the getzuck account.

10 Q. So your answer is yes?

11 A. My answer is not yes.

12 Your question was my position is  
13 Mr. Ceglia deleted the e-mail. I am being very  
14 clear with you that my position is there was  
15 e-mail in that account prior to January 28, 2012  
16 that is no longer there, meaning that it was  
17 deleted.

18 I'm offering no opinion whatsoever  
19 -- let's be clear about this -- as to how that  
20 e-mail was deleted or as to who deleted it, so  
21 the answer to your question is no.

22 Q. How many e-mails were deleted?

23 A. I do not know what was deleted, I do  
24 not know what content was in that account.

25 Again, what I know is that that account

1 B. Rose

2 was in use prior to January 28, 2012, we know it  
3 received at least one e-mail. There is no data  
4 in that account, so something has been deleted; I  
5 can't tell you who deleted it, I can't tell you  
6 what has been deleted because that e-mail is  
7 gone.

8 Q. When were the e-mails deleted from that  
9 account?

10 A. I cannot tell you that except to say  
11 that it was prior to January 28th of 2012.

12 Q. Can a person set up an e-mail account  
13 and not ever send an e-mail using that account?

14 A. Yes.

15 Q. What evidence do you have that  
16 Mr. Ceglia set up this account and actually sent  
17 e-mails out to someone?

18 A. Again, the only evidence we would have  
19 is if the post-January 28, 2012 e-mail includes  
20 sent e-mail.

21 I don't have that information in front  
22 of me, I don't know whether that's the case or  
23 not. I don't have evidence right now that I can  
24 rely on to tell you that Mr. Ceglia set up that  
25 account and sent e-mail from it.

1 B. Rose

2 Q. In your report you talk about a Hex  
3 editor.

4 Do you recall that?

5 A. I do.

6 Q. And it's true that your analysis did  
7 not find -- well, let me back up.

8 A Hex editor is a computer program?

9 A. Yes.

10 Q. You did not find any evidence of a  
11 computer program in the category of Hex editor  
12 installed on any of the media that you analyzed?

13 A. No. We found evidence of the use of a  
14 Hex editor, but you're correct, we did not find  
15 the actual Hex editor installed on the computer,  
16 which, frankly, is not surprising given that  
17 people who use Hex editors generally delete them.

18 Q. And the anomalies that you found that  
19 you attributed to a Hex editor, is a Hex editor  
20 the only program that can create those anomalies,  
21 if you know?

22 A. Can I go to the page where we discussed  
23 the --

24 Q. Very well.

25 A. So, I mean, so I think it depends on

1 B. Rose

2 what anomalies you're talking about. I mean, I  
3 think what we discuss is the fact that there are  
4 six documents which I think, you know, including  
5 ones named test document, including ones which  
6 have the content that says I'm going to  
7 essentially test how the Hex editor worked, and  
8 it's not a direct quote, and I would give you the  
9 direct language, but it's been redacted from this  
10 report, that leads to our conclusion that in  
11 fact, you know, this is consistent with someone  
12 using a Hex editor to try to forge a document.

13 As to the second anomaly, which is is  
14 in this sfwebworkforhiremz.doc which is an  
15 anomaly in the metadata, depending on whether it  
16 was viewed through, you know, Metadata Assistant,  
17 which is a common tool we use, or a forensic  
18 program like EnCase.

19 I think, based on the evidence, the  
20 only reasonable conclusion is that this was the  
21 result of a Hex editor; whether that is the only  
22 possible explanation for that I don't know.

23 Q. And what other explanations are  
24 possible?

25 A. I don't know.



1 B. Rose

2 Q. The Hex editor in this case you claim  
3 was used to manipulate metadata on a file;  
4 correct?

5 A. In one instance.

6 Q. Well, what was it used for in the other  
7 instance?

8 A. It was actually used to create a  
9 fraudulent document, it was used to test how the  
10 Hex editor worked, it was used to essentially, I  
11 think, merge documents together to try to create  
12 a fraudulent document that appeared as if it was  
13 one document.

14 I would say, frankly, that based on all  
15 the evidence that it was your client's attempt to  
16 manipulate the Work For Hire document and create  
17 a fraudulent document.

18 Q. So the Hex editor was used to alter  
19 metadata is one of your conclusions; right?

20 A. Yes.

21 Q. What other ways can metadata be altered  
22 other than a Hex editor, or is that the only way,  
23 if that's what your testimony is going to be?

24 A. Again, I think the anomaly we see here,  
25 which is it being -- it's not just manipulated

1 B. Rose

2 metadata, it's what we see, which is that when  
3 you view it in metadata assistant you essentially  
4 get no metadata.

5 When you view it in a forensic tool,  
6 what you see is the metadata, although it is  
7 interspersed with machine code. I think that  
8 particular circumstance -- I don't know that  
9 there is any explanation for that other than the  
10 use of a Hex editor, but, again, if you are  
11 asking me whether anything else is possible, I  
12 don't know whether there are any other  
13 explanations, I don't think there are any likely  
14 explanations given those circumstance.

15 Q. That's not my question.

16 What other ways can metadata be altered  
17 is my question, generally.

18 A. I mean, there are programs which allow  
19 you to manipulate metadata.

20 Q. For example, can you list some of those?

21 A. I don't know the names of the programs.  
22 I mean, there are some open source tools that do  
23 it, I know there are some software versions you  
24 can buy that allow you to do it, I don't know the  
25 names.

1 B. Rose

2 Q. How about if I copy files from my  
3 computer on a CD and give them to you and you  
4 copy them out of your computer at your office,  
5 can metadata change during that process associated  
6 with those files?

7 A. Metadata can change, yes.

8 Q. And that's not intentional change, it  
9 just happened in that process, the hypothetical  
10 that I gave you?

11 A. Are you talking about like an update of  
12 a creation date or an access date?

13 Q. Yes.

14 A. That can happen through ordinary usage.  
15 This particular circumstance cannot  
16 happen through ordinary usage.

17 Q. How did you rule out ordinary usage as  
18 not a possible cause of that, how did you rule  
19 that out?

20 A. The ordinary update of a file -- I  
21 mean, you're right, if I have last 10 authors  
22 metadata and I go on and I change the document, I  
23 am going to now be the first last 10 author and  
24 one of the names is going to drop off, that is a  
25 common alteration if I am going to write the

1 B. Rose

2 document.

3 To have this, last 10 authors metadata  
4 with all of these question marks that essentially  
5 metadata assistant is returning me the idea that  
6 there's no metadata here, that's an anomaly,  
7 that's not caused by ordinary usage of a file,  
8 and the fact that I can now view it in EnCase  
9 Forensic and see what some of the metadata is,  
10 including the file path, that indicates to me a  
11 Hex editor was been used. That is not -- this  
12 pattern where metadata assistant cannot give me  
13 any metadata does not happen merely because we  
14 exchanged a file and somebody modified it.

15 Q. So the only cause for that is a Hex  
16 editor is your opinion?

17 A. I think the only reasonable explanation  
18 for these facts is that a Hex editor was used.

19 Q. That's not my question.

20 Is that the only way that that happened?

21 A. Again, I think I've answered this  
22 before. I don't know whether anything else is  
23 theoretically possible. I'm drawing a conclusion  
24 based upon the evidence I see. In this case I  
25 don't think there's a reasonable explanation for

1 B. Rose

2 this other than the fact that a Hex editor was  
3 used.

4 Theoretically possible?

5 I don't know one way or the other.

6 Q. Those 15 to 20 computers of  
7 Mr. Zuckerberg's that someone on your team  
8 evaluated, was there evidence of Mr. Zuckerberg  
9 using those computers to electronically  
10 communicate with anyone?

11 MR. SOUTHWELL: Objection, calls for  
12 speculation. He already said he was not  
13 involved with that.

14 Q. If you know.

15 A. I am not aware one way or the other.

16 MR. BOLAND: Can we take it about a  
17 10-minute break?

18 MR. SOUTHWELL: Are you close to being  
19 done?

20 MR. BOLAND: I don't know. I'm going  
21 to take a break and sort of assess where I'm  
22 at.

23 MR. SOUTHWELL: We can go off the  
24 record.

25 (Recess taken.)

1 B. Rose

2 THE VIDEOGRAPHER: The tape is rolling.

3 BY MR. BOLAND:

4 Q. Mr. Rose, we are back on the record.

5 I want to go back over a couple of  
6 things that, just a couple of questions on a  
7 topic or two that we already discussed.

8 Did your team -- your team evaluated 15  
9 or 20 computers that Mr. Zuckerberg used  
10 historically; right?

11 A. I don't know that I would it call my  
12 team; Stroz Friedberg personnel did, yes,  
13 correct.

14 Q. I'll be clear, Stroz Friedberg  
15 personnel, right.

16 I am not going to ask you again, but we  
17 already determined you don't know who actually  
18 did the analysis or who supervised; true?

19 A. Correct.

20 Q. Did Stroz Friedberg rely on the  
21 analysis of those computers in coming to the  
22 conclusions in your report that you filed in this  
23 case?

24 A. Well, we -- I mean, we didn't find  
25 anything relevant on those devices so no, the

1 B. Rose

2 answer is no.

3 Q. If you had found something relevant on  
4 those devices would you have inserted it into  
5 this report?

6 A. I don't know. I mean, you know, we  
7 were -- we were asked to look at the authenticity  
8 or inauthenticity of the document and to examine  
9 Ceglia media, so we had to consider how that fit  
10 into what the Court had asked us to do, but in  
11 general, if we had found something in there that  
12 I think, you know, was, it was relevant, I think  
13 we would have considered including it, certainly.

14 Q. The Kole e-mail that we had some  
15 discussion about, is it possible that someone  
16 other than Paul Ceglia, physically possible that  
17 someone else other than Paul Ceglia could have  
18 sent that e-mail?

19 A. Is it physically possible?  
20 I suppose anything's possible.

21 Q. So the answer is yes, it's possible?

22 A. Yes.

23 Q. I know you've concluded otherwise;  
24 true?

25 A. I think it's implausible, but it's

1 B. Rose

2 certainly theoretically possible.

3 Q. Have you ever in either your personal  
4 or professional work used the copy-and-paste  
5 function on some content on the Internet and then  
6 pasted into a document?

7 A. Yes.

8 Q. And are you familiar with one of the  
9 common programming file formats for the Internet  
10 is HTML?

11 A. Yes.

12 Q. And when you've copied and pasted  
13 stuff from the Internet to a document has that  
14 process ever resulted in that content's  
15 formatting being different in the document from  
16 what it looked like on the Internet?

17 A. Yes.

18 Q. In the conversation we had about the  
19 Hex editor, I need to be a little more precise in  
20 my question about one of the areas there.

21 Can you detail for me, list for me the  
22 computer forensics evidence that supports your  
23 conclusion that the person who used the Hex  
24 editor was Paul Ceglia?

25 A. Can you repeat that question? I'm



1 B. Rose

2 sorry.

3 Q. Yes. Let me clarify.

4 A. Sure.

5 Q. I am aware from your report that you  
6 believe, at the very least, a Hex editor was used  
7 to manipulate some metadata.

8 Is that a fair statement?

9 A. Yes.

10 Q. It was used?

11 A. Yes.

12 Q. And you detailed the forensic evidence  
13 that you believe supports that opinion.

14 Now what I'm asking you is not the  
15 forensic evidence that supports that it was used,  
16 but what, if any, computer forensics evidence  
17 supports the conclusion that Paul Ceglia used the  
18 Hex editor?

19 And I'm saying forensic evidence.

20 A. Sure.

21 So the six documents that were created,  
22 their names, for instance, document created to  
23 copy out of test doc, that I think is very  
24 clearly a pattern to try to create a merged  
25 forged document. Whether that was done by -- I

1 B. Rose

2 think that was clearly done by someone with  
3 motivation to create a fake document. In this  
4 case the person with the motivation to create a  
5 fake document, the person with the greatest  
6 motivation is obviously Mr. Ceglia, who is  
7 attempting to rely on it to support a claim worth  
8 a tremendous amount of money, and whether it was  
9 actually Mr. Ceglia did that or somebody working  
10 in concert with Mr. Ceglia, I don't know, but I  
11 think it's somebody clearly with motivations to  
12 create a false document and in this case I think  
13 the person with the greatest motivation is  
14 Mr. Ceglia.

15 Q. And how do you know what his motivation  
16 is?

17 A. How do I know what his motivation is?

18 Q. How did you determine what his  
19 motivation is?

20 You just talked about his motivation.

21 How did you determine that?

22 A. My understanding is he claims to, based  
23 on a contract, own half of Facebook. That seems  
24 like clear motivation to me, but --

25 Q. Clear motivation to do what?

1 B. Rose

2 A. He's made a claim for half of Facebook,  
3 and clearly your motivation there is money,  
4 right? Facebook's a tremendously valuable  
5 organization. I think the motivation is money.

6 The motivation, then how do you get a  
7 claim?

8 Well, he can't base it on the real  
9 document, the StreetFax contract, because that  
10 doesn't mention Facebook, so I think the  
11 motivation to create a false document is to try  
12 to create something which is not real and didn't  
13 exist in 2003 and is not a contract between Mark  
14 Zuckerberg, but which appears to be a contract on  
15 which you can support a claim.

16 I mean, your motivation, your ultimate  
17 motivation is money. The actions taken are, you  
18 know, all of this, it's not just the Hex editor,  
19 but all of this evidence of manipulation of  
20 documents and fraud in an attempt to support that  
21 claim.

22 Q. But you don't have any opinion --  
23 you're not challenging any of the plaintiff's  
24 experts' opinions that the paper, two-page paper  
25 document is real?

1 B. Rose

2 A. I'm limiting to digital forensics, I  
3 haven't considered the paper at all, I have no  
4 opinion about that.

5 Q. You are not challenging any of their  
6 claims?

7 A. I have no opinion about it whatsoever.

8 Q. Are you challenging any of their claims?

9 A. I have no opinion about it.

10 Q. The question is not whether you have an  
11 opinion.

12 Do you have any evidence to challenge  
13 their claims?

14 A. I'm not challenging or not challenging  
15 their claims, I have no opinion about their  
16 claims.

17 Q. Now, you talk about my client's  
18 motivation sort of is outside the realm of  
19 computer forensics, it seems to me, wouldn't you  
20 agree?

21 His motivation doesn't come out of  
22 metadata or applications or whatever, that  
23 doesn't communicate someone's motivation?

24 A. I think that's correct, yes.

25 Q. And you are speculating about his

1 B. Rose

2 motive?

3 A. Well, I'm not sure I understand that  
4 question.

5 I mean, I think -- I think it is a  
6 clear motive. Whether that's actually what's  
7 motivating him, I mean, I think it's a fairly  
8 clear motive, but I'm not inside his head, if  
9 that's your question.

10 Q. If his paper contract, which you have  
11 no opinion about -- let's have a hypothetical --  
12 if the paper contract's authentic, then you'd  
13 agree with me he doesn't have a motive to fake  
14 electronic documents because he's got a real  
15 contract.

16 Again, it's a hypothetical. If the  
17 paper contract is authentic, he has no motive to  
18 create electronic documents?

19 A. So hypothetically, if his paper  
20 contract is authentic, I would say that's  
21 correct, given the forensic evidence that in fact  
22 all of this fraud was attempted, I would say, you  
23 know, that the corollary to that is it seems  
24 clear that the paper contract is not the genuine  
25 contract.

1 B. Rose

2 Q. But my question is if you assume it is,  
3 so we're not going to talk about it not being  
4 authentic, we are assuming it is authentic, then  
5 he has no motivation to manipulate electronic  
6 files; right?

7 A. I would say that no one has the  
8 motivation to manipulate the files and we  
9 wouldn't see it on here, but we do, so, I mean,  
10 that tells me the contract's not real.

11 Q. Let's talk about motivation.

12 If the paper contract is real you then  
13 would agree with me Mark Zuckerberg has a  
14 motivation to do something to call into question  
15 the authenticity of that paper document. Don't  
16 you think he -- he would lose a lot of money too  
17 if the paper contract is authentic, wouldn't he?

18 MR. SOUTHWELL: Object to the form.

19 A. I certainly -- I mean, I guess I don't  
20 know personally what he would lose versus, you  
21 know, Facebook, who owns what in terms of  
22 their -- but I assume it would have a very  
23 detrimental financial impact on him where he  
24 would have to give up half of Facebook.

25 Q. So my point is about the motivation

1 B. Rose

2 comment. If the paper contract's authentic then  
3 Mr. Zuckerberg, just like Mr. Ceglia in the  
4 opposite conclusion, has a motivation to try and  
5 fake evidence to prevent that contract from being  
6 enforced; correct?

7 A. True. And I do think if we had seen  
8 fraud going the other way, right, that the  
9 motivation might play in. If we'd seen, you  
10 know, that evidence that the StreetFax contract  
11 was in fact apparently a fraudulent document, I  
12 would agree with you that, you know, maybe we  
13 would factor in the motivation and that my  
14 conclusion would be that if the StreetFax  
15 contract that we found, if the forensics  
16 indicated it was a fake document, I think a  
17 logical conclusion would be Mr. Zuckerberg faked  
18 it.

19 That's not what the forensics shows.  
20 The forensics clearly shows that the StreetFax  
21 contract is authentic, there is overwhelming  
22 evidence that there's been fraud perpetrated here  
23 both in the creation of purported e-mails and the  
24 Work For Hire contract relied on by your client.

25 The same holds true there. Our

1 B. Rose

2 conclusion is that the likely person who would  
3 engage in that kind of fraud is Mr. Ceglia.

4 Now, whether any specific action was  
5 actually taken by Mr. Ceglia or was done by  
6 someone, you know, sharing the same motivation or  
7 working in concert with him such as use of the  
8 Hex editor, again, I can't pinpoint an individual  
9 for you, but I can say that, you know, I think,  
10 again, Mr. Ceglia is a likely candidate just as  
11 if the forensics had cut the other way,  
12 Mr. Zuckerberg would be a logical candidate, but,  
13 you know, it didn't.

14 Q. Are you aware that Mr. Zuckerberg was  
15 provided a signed copy of the agreement he  
16 entered into with Mr. Ceglia at the time it was  
17 signed?

18 A. I am not.

19 Q. Okay.

20 Are you aware that there are e-mails  
21 missing from Mr. Zuckerberg's Harvard e-mail  
22 account from periods of time where he was in  
23 communication with Mr. Ceglia?

24 A. I am not.

25 Q. And the two TIFF images that make up



1 B. Rose

2 the StreetFax contract are digital images.

3 We've already talked about that; right?

4 A. Yes.

5 Q. And you don't know where they -- what  
6 device they originated from for sure; correct?

7 A. Again, not beyond saying they appear to  
8 be scanned documents which were then created on  
9 the hard drive, you know, on the morning of March  
10 3rd, yes.

11 Q. And so they could have been scanned at  
12 any point prior to March 3rd?

13 A. They could have been.

14 Q. And what computer forensics evidence,  
15 specifically computer forensics evidence about  
16 those TIFF images tells you they are the  
17 authentic contract between the parties?

18 Not all the other stuff, because I know  
19 you've gone into that multiple times, just those  
20 two TIFF images, what is all the computer  
21 forensics data about those images which tells you  
22 that's the authentic contract?

23 A. So, I mean, as an initial matter, let  
24 me just say that I think in terms of analysis of  
25 the authenticity of the StreetFax contract it is

1 B. Rose

2 impossible from our standpoint to divorce that  
3 from the other evidence that's on the computer,  
4 including evidence that the purported e-mails  
5 were fake, that there was manipulation of  
6 documents, there's backdating of the system clock  
7 on multiple occasions.

8 Having said that, if you just analyze  
9 that alone, and it's not what we do, right, we do  
10 everything in context, but if you just look at  
11 the TIFF images alone I think you have the fact  
12 that it was found on a computer belonging to  
13 Mr. Ceglia, it was e-mailed to his attorney, it  
14 was e-mailed on March 3rd of 2004, it was  
15 e-mailed through intermediary servers at Adelphia  
16 and Sidley & Austin before residing at Sidley &  
17 Austin.

18 The fact that Sidley & Austin  
19 maintained a copy of the e-mail, so you have both  
20 the sending side and the receiving side of a  
21 contract, the fact that it was sent via e-mail  
22 that says -- again, typed, but says Paul to his  
23 attorney saying this is the contract with Mark,  
24 the fact that you have the March 4th and 5th  
25 e-mail chain where, again consistent with the

1 B. Rose

2 small images you've talked about, Mr. Kole says,  
3 I can't read this, there's a handwritten note,  
4 all of that evidence shows me that this is a  
5 genuine contract.

6 I mean, frankly, to me, having the  
7 plaintiff produce a piece of media that contains  
8 a contract that does not support his claim and  
9 having the same e-mail that based on a forensic  
10 analysis was purportedly sent to Sidley & Austin,  
11 to have that be produced by Sidley & Austin, I  
12 mean, even if you put all the other evidence  
13 aside, that ends this case, I mean, that is clear  
14 smoking-gun evidence that the StreetFax contract  
15 is the authentic contract e-mailed from your  
16 client to his lawyer at Sidley & Austin and  
17 you've got both sides of the conversation  
18 producing the same identical e-mail chain.

19 Q. Let me try this way, because you are  
20 not answering my question.

21 MR. SOUTHWELL: Objection.

22 Q. Here's a hypothetical, trying to make  
23 this more precise.

24 If you found an e-mail between Paul  
25 Ceglia and Jim Kole that had a photograph

1 B. Rose

2 attached to it that showed Paul Ceglia's mother  
3 walking on a wire between two buildings in  
4 downtown New York, okay, like a wire walker,  
5 would it be -- and you found all of the server  
6 information that you just detailed that went from  
7 here to here to here, all the servers, and Sidley  
8 Austin had a copy of that e-mail on their server,  
9 everything you've just said about that, would it  
10 be your position that that image of his mother  
11 walking on a wire 400 feet in the air is an  
12 authentic picture of an event that actually  
13 happened? Would that be your position?

14 A. Forgive me if I pause for a minute,  
15 this is an awfully strange hypothetical.

16 So let's assume -- I mean, if I have an  
17 e-mail and the e-mail says, Hey, Jim, this is my  
18 mom tightrope walking, Paul --

19 Q. There you go.

20 A. -- I mean, I guess the question in my  
21 mind would be is there any evidence she is  
22 actually a tightrope walker; right?

23 I mean, it's sort of an odd  
24 hypothetical because you have posited a photograph  
25 of a woman doing something that very few people

1 B. Rose

2 in the world could actually do, so the fact that  
3 the image itself is fairly unrealistic, again,  
4 you know, these are all fairly contextual  
5 analyses, then I think it would lead me to  
6 question whether -- I mean, it wouldn't lead --  
7 it would clearly be an e-mail sent from, you  
8 know, from, I think -- it wouldn't lead me to  
9 question it was sent from Paul to Jim Kole, it  
10 would lead me to question whether it was actually  
11 a true image, but just because of the  
12 strangeness, in this case, you know, it's a  
13 hypothetical which is completely off point to the  
14 actual case, which is you have a standard  
15 contract being e-mailed from, you know, Paul to  
16 his lawyer at Sidley & Austin and a subsequent  
17 conversation about it.

18 Q. Well, to be clear, the e-mail was  
19 actually e-mailed from an account owned by Vera  
20 and Carmine Ceglia; true?

21 A. Well, let's be careful.

22 It is an account that is registered to  
23 Carmine Ceglia. The user name resolves to Vera  
24 Ceglia and the e-mail is signed -- again, as you  
25 pointed out, not a signature, but typed, is Paul.

1 B. Rose

2 Q. So do you feel you're qualified to  
3 testify about the authenticity of images  
4 generally when you see them attached to e-mails,  
5 you can declare which images are authentic and  
6 which images are not?

7 MR. SOUTHWELL: Objection to form.

8 Q. Just yes or no, are you qualified to  
9 testify about it?

10 A. It is not a yes-or-no question, it  
11 would depend on the circumstances.

12 I mean, in a case like this where I  
13 think you have obvious evidence of authenticity  
14 and obvious evidence of fraud, it's a fairly  
15 straightforward case.

16 In other cases I could see, you know,  
17 you depending again on what the image was and  
18 what the question was, in some cases I would say  
19 yes and in some cases no, but it would depend on  
20 what analysis was needed.

21 Q. If I sent an e-mail to Mr. Southwell  
22 and typed the message, Hey, check out this  
23 contract, Alex, signed, and then typed in Bryan  
24 Rose, is it your position that you sent that  
25 e-mail?

1 B. Rose

2 I would assume not.

3 A. So you're -- if you sent an e-mail to  
4 Alex and typed Bryan Rose, is it my position that  
5 I sent that?

6 No.

7 Q. No. I sent a message saying, Alex,  
8 this is Bryan Rose sending you a contract, and I  
9 typed Bryan Rose, that's not from Bryan Rose is  
10 it?

11 A. Not if you sent it, no.

12 Q. Correct.

13 Just because your name is typed at the  
14 bottom doesn't mean it's sent from you; true?

15 A. That's true.

16 Again, if you isolate -- if you isolate  
17 any individual piece, it's possible to say there  
18 are other possibilities, but, again, that's not  
19 what we do. We analyze the forensic evidence in  
20 the entire context of the case, and so that is  
21 one piece of evidence, the fact that it went to  
22 Jim Kole is another piece of evidence, the fact  
23 that Jim Kole had a handwritten note where he  
24 responds is another piece of evidence, the  
25 evidence of backdating is another piece of

1 B. Rose

2 evidence.

3 This is all part of building a picture  
4 of what happened, and so, I mean, if you pull out  
5 any piece of evidence and say what's possible,  
6 that's one thing.

7 That's not what we do. We consider it  
8 in the context of the entire case and we say what  
9 are the reasonable explanations for this, and  
10 given the forensic evidence in this case, the  
11 only reasonable explanation is that the StreetFax  
12 contract is authentic and that your client was  
13 engaged in a massive fraud to attempt to generate  
14 a fraudulent contract, that's the only reasonable  
15 explanation for the digital forensics taken as a  
16 whole.

17 Q. You've made that clear.

18 Can we go to page 21 of your report,  
19 which is Exhibit 11 --

20 A. You mean the top level?

21 Q. Yes.

22 You just mentioned a response from Jim  
23 Kole.

24 This is the document you were referring  
25 to; right?



1 B. Rose

2 A. Correct.

3 Q. And can you -- I'm going to be real  
4 specific.

5 Can you read the date and time of that  
6 e-mail being sent allegedly from Jim Kole?

7 A. Friday, March 5th, 2004, 11:44 a.m.

8 Q. So that's a day later than the alleged  
9 Kole e-mail was sent to him; true?

10 A. I believe it's two days later, correct.  
11 The Kole e-mails were sent by Mr. Ceglia on March  
12 3rd, 2004. This response appears to be on March  
13 5th, 2004, so that's two days.

14 Q. Even better.

15 Whose handwriting is on the document?

16 What computer forensics evidence tells  
17 you who wrote that handwritten note?

18 A. Based on the context the fact that it's  
19 on an e-mail printed out by Jim Kole and the fact  
20 that it is giving legal advice about a contract  
21 that was put in front of him by Mr. Ceglia, the  
22 context indicates to me that it's Mr. Kole's  
23 handwriting, but we haven't -- we are not  
24 forensic -- we are not handwriting experts and,  
25 you know, I couldn't tell you ultimately who

1 B. Rose

2 wrote that.

3 Q. And this is a reply to Paul's -- I'm  
4 sorry, this is an e-mail from paulceglia@msn.com  
5 at the top; right?

6 MR. SOUTHWELL: Objection.

7 Can you just be specific? You're  
8 referring to the top from Ceglia to Kole on  
9 March 5th or the ones below?

10 Q. The very top of the e-mail where it  
11 says from paulceglia@msn; isn't that correct?

12 A. Which one, again, the top level e-mail?

13 Q. The most top level --

14 A. Yes, that is from paulceglia@msn.com.

15 Q. Right.

16 Then let's go down into the body of the  
17 e-mail, there's another e-mail referenced there  
18 and there's the next word "from" and a colon and  
19 "to" and a colon.

20 Do you see that?

21 A. Are we talking about the e-mail  
22 immediately below towards the top level, the  
23 reply to, yes.

24 Q. Yes.

25 And that's paulceglia@msn as well?

1 B. Rose

2 A. Correct.

3 Q. Let's go a little farther down  
4 underneath a little portion that says "original  
5 message" and under there it says "from," and you  
6 see that says paulceglia@msn again?

7 MR. SOUTHWELL: The one on March 4th?

8 A. March 4th, 2004 at 9:49 a.m., yes,  
9 that's correct.

10 Q. So this, you would agree with me,  
11 appears to be an exchange between, if it's  
12 authentic, Mr. Kole and Mr. Ceglia who is  
13 communicating using his msn account?

14 A. Correct.

15 Q. Okay.

16 And as you pointed out, the  
17 communication that is the Kole e-mail came from  
18 an account registered to Carmine Ceglia with the  
19 user name Vera Ceglia?

20 A. Correct.

21 Q. And it's your position that this  
22 represents a reply by Mr. Kole two days later to  
23 the e-mail that came from the Adelphia account?

24 MR. SOUTHWELL: Objection,  
25 mischaracterizes.

1 B. Rose

2 A. That's not my position.

3 That is clearly a separate e-mail  
4 chain, so the Kole e-mails -- the Kole e-mails  
5 that were sent on March 3rd are not part of this  
6 chain, so, you know, what it looks like,  
7 Mr. Ceglia sends the March 3rd e-mails to  
8 Mr. Kole, then opens up a new e-mail chain using  
9 his msn account and they go back and forth based  
10 on that, and so this is -- so it's not a direct  
11 reply.

12 What I'm saying is based on the  
13 content, right, it appears to be discussing the  
14 contract that was provided on March 3rd, 2004,  
15 including a reference to the fact that it can't  
16 be read.

17 Q. Do you know if it was actually  
18 discussing that blurry TIFF image or another  
19 blurry TIFF image? Do you know?

20 Did your forensics analysis tell you  
21 what blurry image they're talking about?

22 A. We only have evidence of one blurry  
23 TIFF image, so we have one blurry TIFF image or  
24 two blurry TIFF images sent on March 3rd, 2004,  
25 and a response here indicating that he's received

1 B. Rose

2 blurry TIFF images, which we know he received,  
3 right, because we know, A, Sidley & Austin still  
4 has them and we know he forwarded them on, so,  
5 yes, I'm basing that on the context here that  
6 when he's referring to blurry TIFF images he's  
7 referring to the blurry TIFF images we know he  
8 received two days before.

9 Q. And he is referring to the blurry TIFF  
10 images he received from the Adelphia account is  
11 your position about when you read this e-mail  
12 here?

13 A. That seems to me to be a reasonable  
14 inference based on what we know, yes.

15 Q. And how did you rule out someone  
16 scanning --

17 A. Again, I'm talking about what --

18 Q. Let me finish the question, sir.

19 A. Yes.

20 Q. How did you rule out additional e-mails  
21 with blurry TIFF images sent from Paul Ceglia's  
22 msn account to Jim Kole and he's replying  
23 regarding that, how did you rule that out?

24 A. I haven't ruled that out. What I'm  
25 saying is what is the likely and reasonable

1 B. Rose

2 explanation.

3 Q. How likely is it that an e-mail was  
4 sent by Paul Ceglia from his msn account with  
5 blurry attachments that he's responding to here,  
6 how likely is that?

7 A. Well, I think given the fact that we  
8 know he sent blurry TIFF images two days before,  
9 it's unlikely.

10 I don't know how to --

11 Q. Why is it unlikely? What do you know  
12 about Mr. Ceglia's personal habits that make it  
13 unlikely in that two-day period he did not send  
14 blurry TIFF images to his lawyer by his msn  
15 account?

16 A. I think it's probably unlikely he's  
17 sending multiple copies of blurry TIFF images,  
18 but --

19 Q. Why is it unlikely? How did you  
20 determine that?

21 A. It seems to me people don't generally  
22 do that, but, you're right, he could have sent a  
23 thousand blurry TIFF images, it seems exceedingly  
24 unlikely to me, but I have not ruled it out.

25 Q. Why is it unlikely?

1 B. Rose

2 A. Again, I think I've answered that  
3 question. It seems to me that if you have a  
4 reference to an attorney having been sent blurry  
5 TIFF images and we know that two days before he  
6 was sent blurry TIFF images that we know he  
7 received, the likely explanation is that he's  
8 referring to those TIFF images. I have not ruled  
9 out the fact that he's referring to other TIFF  
10 images.

11 Q. And there's an intervening two-day  
12 period between the Kole e-mail and this one;  
13 right?

14 A. Correct.

15 Q. And the Kole e-mail and this one were  
16 sent with two different e-mail accounts?

17 I'm sorry, the Kole e-mail is sent with  
18 an Adelphia account; true?

19 A. The Kole e-mail was sent from -- yes.

20 Q. And these exchanges with Mr. Kole are  
21 sent by Mr. -- are with Mr. Ceglia at his msn  
22 account; correct?

23 A. Correct.

24 Q. Okay.

25 So for two days some number of

1 B. Rose

2 e-mails we will never know, right, went back and  
3 forth between Mr. Kole and Paul Ceglia from his  
4 msn account.

5 You don't know how many they sent back  
6 and forth during those two days, do you?

7 A. Well, I know -- I mean, based on the  
8 evidence we have, it would appear to be as if the  
9 e-mail chain here is four e-mails.

10 Whether, you know, how many more than  
11 that, that puts a lower limit on it. I can't  
12 tell you how many e-mails would be in the entire  
13 chain.

14 Q. And they could have simultaneous  
15 different threads going back and forth that  
16 aren't even included here; right?

17 A. They could.

18 Q. So you don't know?

19 A. I don't.

20 Q. Now, your report also challenges  
21 generally the authenticity -- let me back up.

22 Are you aware that there have been two  
23 documents -- two categories of documents  
24 submitted to the Court thus far as attachments to  
25 pleadings that Mr. Ceglia is claiming are



1 B. Rose

2 authentic, one of which is the two-page paper  
3 contract -- you're aware he's claiming that's  
4 authentic; right?

5 A. Yes. You are referring to the Work For  
6 Hire, what we call the Work For Hire document?

7 Q. Yes.

8 A. Yes.

9 Q. And he's also attached to an amended  
10 complaint copies of e-mails that he exchanged  
11 with Mr. Zuckerberg which he's claiming are  
12 authentic e-mails exchanged with Mr. Zuckerberg.

13 MR. SOUTHWELL: Objection. That's not  
14 in evidence, he didn't attach any e-mails.

15 Q. He attached documents to an amended  
16 complaint purporting to be copied and pasted  
17 e-mails between him and Mr. Zuckerberg.

18 MR. SOUTHWELL: Take a look at the  
19 complaint, there's nothing attached.

20 Q. It's attached -- well, let's just  
21 assume you've evaluated e-mails that he claims to  
22 have exchanged with Mr. Zuckerberg; true? You  
23 took a look at them?

24 A. We have evaluated Word documents  
25 containing what appear to be cut and paste --

1 B. Rose

2 Q. Well, my client admits they are copied  
3 and pasted into the Word document, does he not?

4 A. Well, I should say that are claimed to  
5 be cut and pasted.

6 I mean, I am aware that Mr. Ceglia  
7 claims to have Word documents containing e-mails  
8 that purportedly support his claim. We  
9 identified in our forensic analysis three Word  
10 documents that we believe to be those e-mails.

11 Q. And you analyzed them?

12 A. Correct.

13 Q. And there's at least two areas of that  
14 analysis which support -- and maybe there's more,  
15 you can correct me -- your claim and your report  
16 that those e-mails are fakes, so let's go over  
17 them.

18 One of the areas is the Coordinated  
19 Universal Time as it appears in those e-mails is  
20 incorrect based on the fact that it was Daylight  
21 Savings Time at the time they were sent; right?

22 A. So, yes --

23 Q. Is that the e-mails --

24 A. There is a group of e-mails, I believe  
25 it is sent between October 2003 and April 2004 at

1 B. Rose

2 which point Eastern Standard Time would have been  
3 in effect and the offset that's in the e-mails  
4 appear to be Eastern Daylight Time which is an  
5 anomaly which shouldn't occur.

6 Q. Right, that's one area.

7 And the second area you indicate in  
8 your report is formatting and differences between  
9 these e-mails, for example -- and I think you  
10 might remember this one, in one of the e-mails  
11 the word "Tuesday" is spelled out and in the  
12 other one it's abbreviated, things like this is  
13 one of the other areas that you indicate supporting  
14 your belief that those are fraudulent; true?

15 A. Yes, and that's inconsistencies that  
16 they both between the way those should appear,  
17 for instance, the way, you know, Microsoft  
18 Hotmail would abbreviate Tuesday and the way it's  
19 actually abbreviated in the e-mails themselves,  
20 so Microsoft, you know, abbreviates it T-u-e, if  
21 you cut and paste it out it should not say  
22 T-u-e-s, and I know you asked questions earlier  
23 about whether formatting differences can be  
24 introduced during cut and paste; that's true,  
25 but, for instance, the addition of an "s" is not

1 B. Rose

2 a formatting difference that would occur, so I  
3 think that's clear evidence of fraud.

4 There's also inconsistencies among the  
5 documents themselves, so after the "from," colon,  
6 sometimes there's one space, sometimes there's  
7 two, after the "to" there are an inconsistent  
8 number of spaces, there are various formatting  
9 inconsistencies like that and, again, going back  
10 to your point about copy and paste, to the extent  
11 I copy and paste out Hotmail documents and the  
12 formatting change, I would expect it to change in  
13 a consistent way, I wouldn't expect the copy-and-  
14 paste operation to, for instance, insert two  
15 spaces after "to" sometimes and three in another  
16 and one in another.

17 Q. Why would you expect it to do it in a  
18 uniform way?

19 A. Generally -- because, again, when you  
20 are cutting and pasting, if you are cutting from  
21 the same source to the same source, what you  
22 would expect to see is a consistent change.

23 Q. Did Mr. Ceglia cut from the same source  
24 to the same source?

25 A. My understanding is he's cutting from

1 B. Rose

2 his Hotmail account, yes.

3 Q. On what computer was he copying that  
4 from?

5 A. He is copying it from his account, it  
6 wouldn't matter what computer he's copying it  
7 from, you're copying from an Internet Webmail  
8 account, the data is residing on Hotmail servers,  
9 it wouldn't matter what computer he's using.

10 Q. Would it matter what browser he's  
11 using?

12 All browsers format Web mail the same;  
13 is that your position?

14 A. Well, so for the T-u-e-s, right, that  
15 difference and --

16 Q. No. I'm asking you do all browsers --

17 A. You asked me a question, I'm trying to  
18 answer the question.

19 MR. BOLAND: He is rephrasing the  
20 question.

21 MR. SOUTHWELL: He is answering your  
22 question.

23 Q. Do all browsers format Webmail accounts  
24 the same?

25 A. No.

1 B. Rose

2 Q. What browser was Mr. Ceglia using when  
3 he copied and pasted each one of these e-mails?

4 A. I don't know.

5 Q. How did Hotmail function when it came  
6 to abbreviations of things like Tuesday in 2004?

7 A. It abbreviated it T-u-e.

8 Q. How do you know that?

9 A. I think we've tested, we've seen the  
10 way it format, Hotmail formulates Tuesday and it  
11 is T-u-e.

12 Q. In 2004 you ran tests to confirm that?

13 A. My understanding is that we confirmed  
14 that in fact that's the way Hotmail abbreviates  
15 T-u-e.

16 Q. Where do you get that understanding?

17 A. So that understanding was passed --  
18 that information comes from, I believe, directly  
19 from Mike McGowan.

20 Q. So it's your testimony that Mike  
21 McGowan in 2004 tested the Hotmail server?

22 A. No, that's not my testimony.

23 Q. Okay.

24 How did he determine in 2004 that's how  
25 Hotmail worked?

1 B. Rose

2 A. I don't know how he determined that.

3 Q. To the best of your recollection he's  
4 the person who told you that that's how it worked  
5 in 2004?

6 A. Yes.

7 Q. Okay.

8 Did anyone else from Stroz Friedberg  
9 conduct any testing on how Hotmail might have  
10 worked in 2004?

11 A. I don't know the answer to that, I  
12 don't know if the information came directly from  
13 him.

14 I would also just note that how that  
15 works in 2004 is one question.

16 I would also note that you would expect  
17 it to work the same way in 2004 each time; in  
18 other words, you wouldn't expect Hotmail in 2004  
19 to sometimes abbreviate T-u-e, sometimes  
20 abbreviate T-u-e-s.

21 Q. Why would you not expect that?

22 Do you know how Hotmail operates?

23 A. Because they don't configure themselves  
24 back and forth like that, right, there's a  
25 uniform configuration that they don't just run

1 B. Rose

2 and change willy-nilly.

3 Q. How do you know there's a uniform  
4 configuration, what's your basis for that  
5 statement?

6 A. The Webmail account displays dates in a  
7 consistent format.

8 Q. What's your basis for that in 2004  
9 Hotmail consistently displayed Webmail account  
10 information?

11 A. I think it is unquestionable that that  
12 would be the way it would operate, but if you  
13 feel -- I mean, and the idea somehow that  
14 Hotmail, the way they set themselves up, right --  
15 and these are all behind-the-scenes configurations  
16 -- that they somehow had a configuration which  
17 allowed T-u-e sometimes and T-u-e-s other times  
18 as the display is completely implausible to me.

19 Q. What's your basis for it being  
20 implausible?

21 A. I'm saying it's implausible.

22 These are behind-the-scenes  
23 configurations that display uniformly over time.  
24 Now, that's not -- I just -- it's implausible to  
25 me that when you're talking about a series of



1 B. Rose

2 documents from the same time frame, sometimes  
3 very close together, that they're going to  
4 display inconsistently is just implausible.

5 Q. Based on what?

6 A. It's my experience and my understanding  
7 of the way they operate.

8 Q. And do you have any experience with  
9 Hotmail back in 2004?

10 A. I mean, I don't know. I think I may  
11 have been a Hotmail user back in 2004, but --

12 Q. Were you or were you not?

13 A. I don't recall.

14 Q. And the version of Microsoft Word  
15 used -- that contains these documents that this  
16 data was pasted into, how was Microsoft Word  
17 configured back at that time to handle the  
18 pasting-in of data from a browser like a Webmail  
19 account?

20 A. I'm not sure I understand that  
21 question.

22 Q. What kind of changes could Microsoft  
23 Word's program cause to data that's copied and  
24 pasted from a Web mail account back in 2004?

25 A. I don't know.

1 B. Rose

2 Q. Did anyone from Stroz Friedberg try and  
3 test the versions of Microsoft Word that these  
4 documents were created in to see what changes  
5 might occur, if you know?

6 A. Not that I'm aware of.

7 Q. Did you ask Microsoft for any advice on  
8 how formatting changes might have occurred through  
9 that process?

10 A. We did not have any conversation with  
11 Microsoft about that.

12 Q. Did you contact Hotmail?

13 A. No.

14 Q. Did you attempt to configure a Hotmail  
15 server the way it would have been configured back  
16 in 2004, e-mail server?

17 A. No.

18 Q. And did you test even in the current  
19 time, 2011, how data copied from different Web  
20 browsers in Webmail accounts and then pasted into  
21 Microsoft Word might result in different  
22 formatting? Did you run that test?

23 A. I did not. I don't know whether it was  
24 done.

25 Q. Now, the Coordinated Universal Time

1 B. Rose

2 that appears in an e-mail if -- let's just say  
3 2011 as a hypothetical, assume this is the case,  
4 but I'll just ask you to assume it as a  
5 hypothetical, that Daylight Savings Time, we went  
6 from Standard Time to Daylight Savings Time  
7 somewhere in March of 2011, the date's not  
8 relevant to the question, is it the case that if  
9 an e-mail is sent before that change of time, but  
10 the person doesn't open it until after we've  
11 changed into Daylight Savings Time, what  
12 Coordinated Universal Time would appear in that  
13 e-mail if it's opened at that time? Is  
14 Coordinated Universal Time reflective of when the  
15 person actually opens the e-mail or when the  
16 e-mail was sent?

17 A. So it would in general, I think,  
18 display based on the time zone of the computer  
19 clock being used to view it, but I don't know  
20 with Hotmail how that would operate in that  
21 hypothetical.

22 Q. And if that computer clock is set  
23 correctly, hypothetically, then the Coordinated  
24 Universal Time in that e-mail should be correct,  
25 should be accurate?

1 B. Rose

2 A. Again, I don't know how Hotmail  
3 specifically operated there.

4 Q. Are there any -- you conclude about  
5 these e-mails that the Coordinated Universal Time  
6 is not consistent with the time of year in which  
7 they were allegedly received, I believe -- I'm  
8 summarizing and if I'm doing it incorrectly,  
9 please put the words in you think make it  
10 correct.

11 A. Okay.

12 Q. Is it only fraud which could be the  
13 cause of that Coordinated Universal Time being  
14 apparently in error in these e-mails? Just the  
15 e-mail itself, not considering everything else  
16 that you clearly think my client's committing a  
17 fraud, just looking at that e-mail and  
18 Coordinated Universal Time is off, is the only  
19 conclusion for that fraud got to be fraud?

20 A. So forgetting -- I guess I'm forgetting  
21 everything else I know, I just got an e-mail --

22 Q. If I just give you an e-mail and I say  
23 I just got this e-mail today or it was sent today  
24 and received today and you look at it and say,  
25 Well, Dean, the Coordinated Universal Time is

1 B. Rose

2 off, would you then say, in my opinion that  
3 e-mail is a fraud because of that one fact?

4 A. I'd say that standing alone, no, not  
5 necessarily.

6 Q. And the formatting differences we  
7 talked about before, standing alone, not  
8 indications of fraud necessarily either, they can  
9 just occur sometimes?

10 A. I think the formatting differences we  
11 see here are clear indications that the document  
12 has been manipulated, so I would disagree with  
13 that. I don't think there's any plausible  
14 explanation that these could be the result of  
15 formatting differences introduced as a cut-and-  
16 paste operation, so I would disagree with that.

17 You're asking me the mere appending of  
18 the wrong time zone to an e-mail standing alone  
19 without any other fact surrounding it, there  
20 could be other explanations for that.

21 Q. And are you aware of any e-mails or  
22 references to e-mails in this case from a source  
23 other than Mr. Ceglia which have the wrong  
24 Coordinated Universal Time attached to them?

25 A. I am aware -- I'm trying to think in

1 B. Rose

2 terms of the time zones -- there is in, I think,  
3 one of the, again, the intermediary servers in  
4 the Sidley & Austin e-mails had the wrong time  
5 zone setting; those are the only examples I can  
6 think of.

7 Q. Let me try and jog your memory a little  
8 bit.

9 You and I have exchanged e-mails in the  
10 past couple of weeks about this Kasowitz letter  
11 issue; are you generally familiar with that?

12 A. Yes.

13 Q. You sent me a TrueCrypt container on a  
14 couple of occasions, and there's an item 379,  
15 does that ring a bell, as one of the items we've  
16 been corresponding with and --

17 A. It does.

18 Q. And you had to evaluate that item to  
19 see if it was relevant to put it on a relevant  
20 items log in the past; do you recall that?

21 A. Yes.

22 Q. I'm not asking you to memorize it, but  
23 you did read through it to see if it was  
24 relevant, obviously?

25 A. Yes. I mean, it is an extremely long

1 B. Rose

2 document --

3 Q. It is.

4 A. -- so I may not have read it word for  
5 word, but I've reviewed enough of it to know that  
6 the contents are relevant.

7 Q. Right.

8 And let me just state, and this is the  
9 record in this case, that that item 379 is a  
10 single e-mail with some attachments and then in  
11 the body of that e-mail are referenced many more  
12 e-mails, it's quite a long document, as you  
13 indicated.

14 A. It's a long chain.

15 Q. Right.

16 So that's generally what it is.

17 And many of those e-mails referenced in  
18 the body of 379 are e-mails that appear to be  
19 between lawyers that were working with Mr. Ceglia  
20 at that time.

21 Do you recall that?

22 A. I know there are some, some of those  
23 e-mail exchanges are between lawyers working for  
24 Mr. Ceglia at the time.

25 Q. And now here's the hypothetical, and

1 B. Rose

2 because I don't have 379 in front of me, I won't  
3 ask you to trust me on this, so I will convert it  
4 to a hypothetical.

5 Let's say some of those e-mails  
6 referenced in the body of 379, if some of them  
7 were sent at a time where the Coordinated  
8 Universal Time should have been, let's say, minus  
9 500, but it says minus 400, it's wrong, you  
10 wouldn't conclude, based on that, that some of  
11 those prior lawyers for Paul Ceglia were  
12 committing fraud?

13 A. So this is a hypothetical specifically  
14 about 379?

15 Q. Right.

16 If some of those e-mails have the wrong  
17 Coordinated Universal Time that's not an  
18 indication of fraud by those lawyers, in your  
19 opinion?

20 A. So given the context, no, I would not  
21 conclude that.

22 Q. And that Kasowitz e-mail you just  
23 recently sent it to me in a TrueCrypt container  
24 as a native format e-mail.

25 Do you recall sending that to me?



1 B. Rose

2 A. Yes.

3 Q. Okay.

4 That native format e-mail itself has  
5 one attachment. I don't know if you recall that.

6 Do you recall it?

7 A. I thought it had more attachments than  
8 that, but I don't recall.

9 Q. And that actual individual e-mail was  
10 never included by you on a privilege log in this  
11 case by itself, if you recall?

12 MR. SOUTHWELL: What specifically are  
13 you referring to?

14 MR. BOLAND: The native format  
15 individual e-mail dated August -- April 13,  
16 2011, which you recently sent to me itself  
17 was never included on a privilege log in  
18 this case.

19 MR. SOUTHWELL: I'm just going to  
20 object, this doesn't seem to have anything  
21 to do with Coordinated Universal Time or the  
22 report, so it's an objectionable line, but  
23 if you're going to connect it, I'd like to  
24 hear that.

25 MR. BOLAND: I would like to hear the

1 B. Rose

2 answer of the witness, but I hear your  
3 objection.

4 A. I mean, I sent you, as I recall, what I  
5 recently sent you included several -- it was  
6 one -- it was item 379 -- I mean, there were  
7 various items in that, right, there were various  
8 attachments, I don't think it was limited to one  
9 attachment, so I guess I'm not sure exactly which  
10 document you're talking about.

11 I mean, it's possible to me -- and, you  
12 know, we include, when we include an e-mail, we  
13 also include their attachment, so just merely  
14 saying dated April 13th I'm not sure I can with  
15 precision identify the document which you're  
16 talking about.

17 Q. Fair enough.

18 Let's talk about use of computers  
19 generally.

20 Would you agree with me that -- and  
21 maybe you've seen this in your work -- that  
22 people can lie about how they actually use their  
23 computers?

24 A. Yes, I would agree that people can lie  
25 about the way they use their computers.

1 B. Rose

2 Q. And as a forensics expert you wouldn't  
3 rely on a witness' statement about how they used  
4 their computer without confirming it through  
5 forensic analysis?

6 A. That's correct.

7 Q. And would you agree that people who  
8 commit fraud often make self-interested  
9 statements to try and avoid detection for that  
10 fraud?

11 A. As a hypothetical, yes, I think I would  
12 agree with that.

13 Q. And I think I asked you this before.  
14 You never spoke with Mark Zuckerberg  
15 about how he used his Harvard e-mail account?

16 A. I've never spoken with Mark Zuckerberg  
17 about anything.

18 Q. Did you ask his lawyers to get  
19 information from him telling you how he used his  
20 Harvard e-mail account?

21 A. So let me be clear: Our role in the  
22 Harvard e-mail account was to work with Harvard  
23 to make sure we'd gotten all of the historical  
24 copies, to perform whatever collections were  
25 necessary and then to perform electronic

1 B. Rose

2 discovery processing to create an aggregate data  
3 set, to then subject that to certain search terms  
4 and provide those to Gibson, Dunn for review as  
5 well as to conduct our own review of those, of  
6 certain specified documents to determine whether  
7 the purported e-mails were found there and to  
8 identify communications between Mr. Zuckerberg  
9 and various people involved with StreetFax.com,  
10 that was our charge with the Harvard e-mail, and  
11 so I did not ask Gibson, Dunn to do that, I don't  
12 think, given our role, that would have been a  
13 relevant consideration for us or appropriate for  
14 me to tell Gibson, Dunn to go ask a question  
15 that's irrelevant to the work I'm tasked to do.

16 Q. And did you somehow confirm with anyone  
17 that this was all of Mark Zuckerberg's available  
18 e-mail that was relevant to expedited discovery?

19 A. I find that to be a confusing question  
20 because my reading of the order in the protocol  
21 is that the expedited discovery phase is focused  
22 on an analysis of Mr. Ceglia's media and  
23 Mr. Ceglia's e-mail, so --

24 Q. I'm just asking the question, sir.

25 Did you ask someone to have Mark

1 B. Rose

2 Zuckerberg confirm that you had access to all of  
3 his e-mail? Did you ask someone that question?

4 MR. SOUTHWELL: Objection. You are  
5 asking -- well, you are asking a different  
6 question, but --

7 MR. BOLAND: That's my question.

8 A. I did not ask anyone to make sure that  
9 we had access to all of Mark Zuckerberg's e-mail.  
10 There was, you know, we were involved in  
11 conversations with Harvard IT to make sure that  
12 we had gotten everything that was available. We  
13 were, as I said, involved early on in analysis of  
14 various other assets of Mr. Ceglia that I  
15 understood to be comprehensive, but as to that  
16 specific question, no, I don't recall asking that  
17 specific question.

18 Q. It's possible, then, that there is  
19 additional sources of e-mail relevant to this  
20 case which you have not had access to?

21 A. Is it possible?

22 I mean, again, anything's possible, so  
23 I would say yes.

24 Q. Don't you think it's a prudent thing to  
25 do to ask the person who's the custodian of their

1 B. Rose

2 e-mail account if that's everything?

3 A. Is that a prudent thing to do in  
4 general?

5 Q. In this case don't you think it would  
6 have been a prudent thing to do to ask the  
7 defendants, Hey, ask Mr. Zuckerberg is this is  
8 everything or if he's got e-mails somewhere else?

9 A. To me, you're asking me a question that  
10 is appropriately a strategy question for  
11 attorneys that goes outside what I was charged to  
12 do in the case, which involves expedited  
13 discovery and to describe the work with  
14 Mr. Zuckerberg's e-mails, so as to whether that  
15 would be prudent in this case, you know, I  
16 haven't really considered that and I don't think  
17 I want to offer an opinion on it.

18 Q. What do you think the likelihood is  
19 that there's other e-mail or electronic  
20 communications relevant to this case that you  
21 have not had access to?

22 A. I would think, given the thoroughness  
23 I've seen of the investigations that I've been  
24 party to, I think it unlikely, but it's possible.

25 Q. You talked about one of the retrievals

1 B. Rose

2 from the Harvard server was from November 2003,  
3 you got e-mail from that time period?

4 A. That's correct.

5 Q. Not in that time period, but from that  
6 time period?

7 A. From that time period.

8 In other words, just to be clear, a  
9 historical snapshot of what existed in the  
10 mailbox at some point in November 2003.

11 Q. And did you find any e-mails in that  
12 retrieval that were not included in the  
13 subsequent productions that you got, either  
14 collected or received from Harvard?

15 MR. SOUTHWELL: Are you asking about  
16 Ceglia-Zuckerberg e-mails?

17 MR. BOLAND: Yes.

18 A. I believe so. You're talking about  
19 between the November 2003 and the subsequent  
20 productions, the first of which would have been  
21 in October 2010?

22 Q. Right.

23 A. Yes, I believe there were e-mails that  
24 were included in that production that were not  
25 included, not unsurprisingly, in a production

1 B. Rose

2 that occurred seven years later.

3 Q. And what happened to those e-mails that  
4 were not in that production seven years later?

5 A. I don't know.

6 Q. Did you ask the defendants to ask  
7 Mr. Zuckerberg what happened to those e-mails?

8 A. I did not.

9 Q. Did anyone else from Stroz Friedberg  
10 ask that question of the defendants, if you know?

11 A. Again, given our task with the e-mail,  
12 I don't think that would be an appropriate  
13 question for us to direct to Gibson, Dunn.

14 Q. Did you see Paul Ceglia's -- a recent  
15 declaration of Paul Ceglia stating that he sent  
16 e-mails to Mr. Zuckerberg between the time period  
17 of March 2003 and June of 2003?

18 A. I may have, I don't recall that.

19 Q. And are you aware that your -- that  
20 Stroz Friedberg did not recover any e-mails  
21 between Mr. Ceglia and Mr. Zuckerberg during that  
22 time period?

23 A. I am not.

24 Q. Did you see the production that Stroz  
25 Friedberg provided to the plaintiff pursuant to



1 B. Rose

2 the expedited discovery order of the Harvard  
3 e-mails?

4 A. Did I see the production itself?

5 Q. Before it was produced to us did you  
6 look at it?

7 A. No.

8 Q. Do you think it's -- what's your  
9 opinion of the likelihood that this contract  
10 signed on April 28, 2003, that the terms of this  
11 contract were discussed between Mr. Ceglia and  
12 Mr. Zuckerberg using e-mails before the date it  
13 was signed?

14 A. I wouldn't even want to offer an  
15 opinion on that.

16 Q. Assuming, because it is the case, but  
17 we will just assume it for this, that there are  
18 no e-mails between the parties Ceglia and  
19 Zuckerberg from around March of '03 till June of  
20 '03, don't you think that's a little odd that  
21 they have no e-mail communication before the  
22 signing of this contract in April of 2003 and  
23 then for another six weeks, 5-1/2 weeks later,  
24 still no e-mail communication in Mr. Zuckerberg's  
25 Harvard e-mail account? Don't you find that odd?

1 B. Rose

2 A. No.

3 Q. Now, you found -- the report details  
4 several different documents that are similar to  
5 the paper contract in this case with the Facebook  
6 language in it, true, in your report, you talk  
7 about those?

8 A. So we talk about multiple unsigned  
9 versions of what we refer to as the Work For Hire  
10 contract, yes.

11 Q. Yes.

12 And did your forensic analysis provide  
13 you with which one, if any, of those unsigned  
14 versions was the one that was printed and became  
15 the paper contract that my client is now offering  
16 as the authentic contract between the parties?

17 A. I think none of them were printed  
18 directly because they all vary somewhat in  
19 substance from the actual original contract; in  
20 other words, they are all similar documents, but  
21 there are seven different variations, so the  
22 printed copy is ultimately different.

23 We did not identify any exact duplicate  
24 copies of the Work For Hire contract save for one  
25 that was included in an e-mail from Mr. Argentieri

1 B. Rose

2 that was post litigation.

3 Q. And you are aware that Mr. Ceglia has  
4 not offered or attached to any pleadings any of  
5 those similar versions of the Work For Hire  
6 contract? You are aware of that?

7 A. I don't believe he has.

8 Q. And he didn't attach the e-mail from  
9 Jim Kole or the TIFF images to any pleadings or  
10 anything that he's filed in this case, you are  
11 aware of that?

12 A. I am aware of that, yes.

13 Q. Now, your forensic report and your  
14 analysis is not arguing that the paper contract  
15 itself is backdated somehow?

16 A. I am not offering any opinions on the  
17 paper contract at all.

18 Q. And there's no computer evidence that  
19 you found suggesting that Mr. Zuckerberg did not  
20 sign page 2 of the paper contract?

21 That's a double negative, I can ask it  
22 a little more clearly.

23 A. Sure, that would help.

24 Q. Did you find any computer forensics  
25 evidence suggesting that Mr. Zuckerberg was not

1 B. Rose

2 the person who signed the second page of the  
3 paper contract?

4 MR. SOUTHWELL: You're talking about  
5 the original paper Work For Hire document  
6 that was presented for production?

7 MR. BOLAND: Correct.

8 A. The forensic evidence that we found  
9 overwhelmingly indicates that the StreetFax  
10 contract is authentic; therefore -- and the  
11 evidence also indicates with all the manipulation  
12 that the Work For Hire contract is a fake, so I  
13 would say that that evidence would lead me to  
14 conclude, without even having to analyze the  
15 paper, which I have no opinion on and I am not an  
16 expert on, that any paper document presented that  
17 purports to be the Work For Hire document signed  
18 by Mark Zuckerberg is a fake.

19 Q. What I'm asking you is, is the computer  
20 forensic evidence, is there any that tells you  
21 that the person who put a signature on page 2 of  
22 the paper contract was not Mark Zuckerberg? Do  
23 you have forensic evidence that points you to  
24 that not happening, for example, an e-mail that  
25 Mark Zuckerberg says, I never signed page 2 of

1 B. Rose

2 the contract, did you find anything like that?

3 A. We did not find anything like an e-mail  
4 from Mr. Zuckerberg disclaiming that he'd signed  
5 page 2 of that contract.

6 Q. Okay.

7 Did you find any Web history that  
8 supports an argument that Mr. Zuckerberg didn't  
9 sign page 2 of the paper contract?

10 A. I mean, again, beyond, you know, some  
11 of the Internet history providing some evidence  
12 that, you know, the StreetFax contract is  
13 authentic, the other contract is fake, no.

14 Q. Did you visually compare a copy of page  
15 2 of the paper contract with page 2 of the  
16 StreetFax contract, looking at them side by side?

17 A. I probably have looked at them side by  
18 side before. I don't recall.

19 Q. Do you recall what your reaction was to  
20 that comparison? Did they look the same to you  
21 or different?

22 A. I don't recall.

23 Q. Now --

24 MR. SOUTHWELL: If you are going to a  
25 different topic, we are approaching 3-1/2

1 B. Rose

2 hours.

3 Do you know how much more you think  
4 you've got planned?

5 MR. BOLAND: I don't really know. I  
6 will probably go over 3-1/2 a little bit.

7 MR. SOUTHWELL: When would you like to  
8 take a lunch break? I would like to take a  
9 little lunch break.

10 MR. BOLAND: We can do that now.  
11 Do you want to?

12 MR. SOUTHWELL: How much more do you  
13 think you have?

14 MR. BOLAND: Probably an hour, I'm  
15 guessing.

16 MR. SOUTHWELL: Do you want to go off  
17 the record, then, at this point?

18 MR. BOLAND: Let's go off the record,  
19 we can do that.

20 (Lunch recess: 2:09 p.m.)

21

22

23

24

25

1 B. Rose

2 A F T E R N O O N S E S S I O N

3 (Time noted: 3:05 p.m.)

4 MR. BOLAND: We can start the tape.

5 THE VIDEOGRAPHER: And we are rolling.

6 MR. DUPREE: Timewise, I know you  
7 requested, I think, three and a half hours,  
8 which I think we are probably at about that  
9 limit now. I am not going to shut things  
10 down, but I wanted to call that to your  
11 attention.

12 MR. BOLAND: Yes, we are a little bit  
13 over. Probably another hour or so and that  
14 will wrap it up, presumably.

15 MR. DUPREE: Hopefully we can do that  
16 quickly.

17 MR. BOLAND: Yes, I will.

18 B R Y A N J. R O S E, resumed and  
19 testified as follows:

20 EXAMINATION BY (Cont'd)

21 MR. BOLAND:

22 Q. Mr. Rose, in addition to the two TIFF  
23 images which were named Scan0001 and 0002, you  
24 didn't find any other -- you found those on the  
25 computer in one location and that was it,

1 B. Rose

2 according to your report, if I'm recalling it  
3 correctly, you didn't find them anywhere else?

4 I'm saying the Ceglia media, not the  
5 Sidney & Austin servers now.

6 A. So we found -- so we found the TIFF  
7 images in the Outlook Express mailbox, we also  
8 found what appeared to be deleted versions that  
9 had been created on the hard drive immediately  
10 before being sent, which is why we determined  
11 they appeared to be copied from the hard drive  
12 and then sent from the hard drive, but we  
13 believed those copies represented those files  
14 because the file size and file name, but in terms  
15 of an actual copy with content, although one of  
16 the deleted files was partially recoverable in  
17 terms of content, that was the only location was  
18 the Outlook Express file.

19 Q. And the comment you just made about  
20 believing that those files were the same, let's  
21 talk about that for a moment.

22 The deleted versions had the same file  
23 name as the versions you actually found and they  
24 had the same file size?

25 A. The same file size, in addition to one



1 B. Rose

2 of them was partially recoverable and the content  
3 was the same.

4 Q. And what's the likelihood that those  
5 files that had the same file name and the same  
6 file size were in fact versions of the two files  
7 that you did find, what would be your opinion on  
8 that?

9 A. I think it's very likely. Certainly  
10 for the one -- I would say for the one -- very  
11 likely, particularly given the fact we were able  
12 to recover some content, compare that.

13 Q. Even without the content, is it fairly  
14 likely they are same?

15 A. Yeah.

16 Q. Is that a common way that forensic  
17 experts will reach that conclusion in general is  
18 if they have two files with the same name and the  
19 same file size, but one of them the content is  
20 missing, they will conclude it's likely that  
21 that's a copy?

22 A. I think it depends on the context, but  
23 in general, yes. I mean, you know, the file  
24 name, depending on what you're comparing, can be  
25 more or less persuasive, depending on the

1 B. Rose

2 circumstances. Comparing the file size, you  
3 know, it's one way to reach a conclusion the two  
4 files are the same.

5 Q. Can you, on this similar topic, on page  
6 54 of Exhibit 1, which is the version of your  
7 report that we provided you today that has the  
8 file stamp across the top, do you see on page 54  
9 you are talking about a missing USB device and  
10 links, link files on a Toshiba laptop that  
11 reference two files that your report indicates  
12 you believe were on that missing USB device?

13 Do you see where I'm referring to  
14 there?

15 A. So the -- at the top of the page it's a  
16 list of USB devices which were attached to  
17 various PC media but were not produced.

18 Q. Right.

19 A. And then the discussion does include  
20 two files which were link files were found on a  
21 Toshiba laptop, two files on a USB device, yes.

22 Q. Right.

23 And those are the files -- those are  
24 two files that I believe -- correct me if I'm  
25 wrong -- you're saying they were named -- well,

1 B. Rose

2 yeah, what's a link file, if you can just  
3 describe that for the Court?

4 A. It's essentially like a shortcut, I  
5 mean, it's a file, your computer puts down a link  
6 file so that it can recall a document quicker, it  
7 is a shortcut file, it's a pointer, essentially.

8 Q. In about the third full paragraph you  
9 start talking about on the Toshiba satellite  
10 laptop.

11 Do you see that?

12 A. Mm-hm.

13 Q. And then you name the two link files?

14 A. Yes.

15 Q. And the embedded metadata, these link  
16 files show that they point, what does that mean,  
17 the embedded metadata, what are you referring to  
18 there, these link files show that they point to a  
19 removable device? Can you explain that?

20 A. So if you analyze the link file itself  
21 you can see essentially to what it's pointing,  
22 generally whether it's an Internet location,  
23 whether it is a removable device location, so  
24 that would just indicate that the metadata  
25 associated with the files, which is just, you

1 B. Rose

2 know, information about the -- data about data,  
3 right, so it is data about the files, we were  
4 able to determine from that that it pointed to a  
5 USB removable device rather than to the Internet  
6 or some other location.

7 Q. And the link is not an actual file,  
8 it's just a pointer?

9 A. Well, it's an actual file, I mean, it's  
10 a link file, but it's not -- it is a pointer to  
11 another file, yes.

12 Q. It isn't the file that it is pointing  
13 to, it's just a pointer to it?

14 A. So a link file to the Zuckerberg  
15 contract page 1 TIFF is not the actual TIFF  
16 document, it's a pointer to that document.

17 Q. And it's not a copy of the actual  
18 document, it's just a pointer?

19 A. No, yes.

20 Q. So that file, as you put in your report,  
21 is one of the evidence, pieces of evidence under  
22 a claim the defendants -- you know the defendants  
23 have made a claim of spoliation of evidence  
24 against Mr. Ceglia; right? Are you aware of  
25 that?